

ROBERT T. SULLWOLD (SBN 88139)
JAMES A. HUGHES (SBN 88380)
SULLWOLD & HUGHES
235 Montgomery Street, Suite 730
San Francisco, CA 94104
(415) 263-1850
(415) 989-9798 FAX

Attorneys for
Respondent White Pacific Securities, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DENISE R. REED,

Petitioner

v.

WHITE PACIFIC SECURITIES, INC.
and ROY L. PANELLI,

Respondents.

Case No.: C07-3648 CW

**WHITE PACIFIC'S ANSWER TO REED'S
PETITION TO CONFIRM ARBITRATION
AWARD**

For its Answer to Petitioner Denise R. Reed's Petition to Confirm Arbitration Award
Against Respondents White Pacific Securities, Inc. and Roy L. Panelli, respondent White Pacific
Securities, Inc. ("White Pacific") admits, denies, and alleges as follows:

JURISDICTION AND VENUE

1. White Pacific admits the document attached to Exhibit A to the Declaration of
Jonah A. Toleno is a true and correct copy of the arbitration award issued in the matter of Denise R.
Reed, Claimant v. White Pacific Securities, Inc. and Roy L. Panelli, NASD Dispute Resolution Case No.
04-03449. White Pacific denies, however, that this Court has subject-matter jurisdiction over this
action.

2. White Pacific admits that, if this Court had subject-matter jurisdiction over this
action, venue would be proper in this District. White Pacific denies, however, that this Court has

subject-matter jurisdiction over this action. As the subsequent allegations of the Petition themselves demonstrate, diversity jurisdiction under 28 U.S.C. § 1332 does not exist because petitioner and one of the named respondents are citizens of the same State. In addition, the Federal Arbitration Act, 9 U.S.C. § 1, et seq., does not confer federal question jurisdiction over this action, and the Petition alleges no independent basis for such jurisdiction under 28 U.S.C. § 1331. See Carter v. Health Net of California, Inc., 374 F.3d 830 (9th Cir. 2004).

PARTIES

3. White Pacific admits the allegations of paragraph 3 on information and belief.

4. White Pacific admits the allegations of paragraph 4.

5. White Pacific denies that respondent Roy L. Panelli is an employee of White Pacific.

MATERIAL ALLEGATIONS

6. White Pacific objects to the “incorporation by reference” into the Petition of a declaration from petitioner’s counsel. Nevertheless, having reviewed the declaration, White Pacific admits that the statements made by counsel in paragraphs 2, 3 and 6 appear to be true. As to paragraph 4 of counsel’s declaration, White Pacific admits that the document attached as Exhibit A to counsel’s declaration is a true and correct copy of the arbitration award and alleges that the award speaks for itself. White Pacific is constrained to note, however, that the panel denied petitioner’s request for compensatory and punitive damages and, indeed, she recovered no monetary relief on her claims. As to paragraph 5 of counsel’s declaration, White Pacific admits that, on or about July 5, 2007, it sent a check for \$5,603.70 to petitioner’s counsel in payment of the costs and filing fees awarded by the panel and that, on the same day, it deposited the sum of \$158,797.10 in an escrow account pending the panel’s ruling on White Pacific’s motion to modify the award as to attorneys’ fees. White Pacific alleges that, its motion having been denied by the panel, it sent the entire amount held in the escrow account by wire transfer to petitioner’s counsel on or about August 1, 2007. White Pacific further alleges that, after petitioners’ counsel demanded payment of additional sums as post-judgment interest, White Pacific sent the sum of \$2,480.07 by wire transfer to petitioner’s counsel on or about August 10, 2007.

7. White Pacific admits that paragraph 7 accurately describes the allegations made

1 by petitioner in her Amended Statement of Claim submitted to NASD Dispute Resolution.

2 8. White Pacific admits that the arbitration hearing was conducted on April 16-18,
3 2007 and that thereafter the panel issued its award.

4 9. White Pacific admits that NASD Dispute Resolution staff served the arbitration
5 award on June 5, 2007. White Pacific alleges that the award speaks for itself. White Pacific is
6 constrained to note, however, that the panel denied petitioner's request for compensatory and punitive
7 damages and, indeed, she recovered no monetary relief on her claims.

8 10. White Pacific denies that it has submitted payment only of the amount awarded to
9 petitioner for costs and expenses and alleges that, in fact, it sent the entire amount being held in escrow
10 -- \$158,797.10 -- by wire transfer to petitioner's counsel on or about August 1, 2007. White Pacific
11 further alleges that, after petitioners' counsel demanded payment of additional sums as post-judgment
12 interest, White Pacific sent the sum of \$2,480.07 by wire transfer to petitioner's counsel on or about
13 August 10, 2007.

14 FIRST AFFIRMATIVE DEFENSE

15 1. This Court lacks subject-matter jurisdiction over this action. Diversity
16 jurisdiction under 28 U.S.C. § 1332 does not exist because petitioner and one of the named respondents
17 are citizens of the same State. In addition, the Federal Arbitration Act, 9 U.S.C. § 1, et seq., does not
18 confer federal question jurisdiction over this action, and the Petition alleges no independent basis for
19 such jurisdiction under 28 U.S.C. § 1331. See Carter v. Health Net of California, Inc., 374 F.3d 830 (9th
20 Cir. 2004).

21 SECOND AFFIRMATIVE DEFENSE

22 2. White Pacific has paid, and petitioner has accepted payment of, all sums ordered
23 by the arbitration panel to be paid by White Pacific to petitioner for costs, expenses, and attorneys' fees.
24 In addition, petitioner demanded, White Pacific paid, and petitioner accepted payment of post-judgment
25 interest. Petitioner's request for monetary relief is therefore barred by the doctrines of accord and
26 satisfaction and estoppel.

27 WHEREFORE, respondent White Pacific Securities prays that, if this Court decides it
28 has subject-matter jurisdiction over this action, it enter judgment as follows:

